

Errant Judges: What's a Lawyer to Do?



Honorable Jayne Frances Duncan
Magisterial District Judge
Immediate Past Chair
Judicial Conduct Board

Honorable Robert A. Graci
Chief Counsel
Judicial Conduct Board

Judges are held to high standard of conduct



Code of Judicial Conduct

APPLIES TO:

SUPREME COURT JUSTICES
SUPERIOR COURT AND COMMONWEALTH COURT JUDGES
COMMON PLEAS COURT JUDGES
PHILADELPHIA MUNICIPAL COURT JUDGES

Rules Governing Standards of Conduct of Magisterial District Judges

APPLY TO:

MAGISTERIAL DISTRICT JUDGES
PHILADELPHIA TRAFFIC COURT JUDGES

OVERARCHING PRINCIPLES

Preamble

AN INDEPENDENT, FAIR, HONORABLE AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO OUR SYSTEM OF JUSTICE. ... THE RULES CONTAINED IN THIS CODE NECESSARILY REQUIRE JUDGES, INDIVIDUALLY AND COLLECTIVELY, TO **TREAT AND HONOR THE JUDICIAL OFFICE AS A PUBLIC TRUST**, STRIVING TO PRESERVE AND ENHANCE LEGITIMACY AND CONFIDENCE IN THE LEGAL SYSTEM.

JUDGES SHOULD UPHOLD THE DIGNITY OF JUDICIAL OFFICE AT ALL TIMES, AVOIDING BOTH IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN THEIR PROFESSIONAL AND PERSONAL LIVES. THEY SHOULD AT ALL TIMES CONDUCT THEMSELVES IN A MANNER THAT GARNERS THE HIGHEST LEVEL OF PUBLIC CONFIDENCE IN THEIR INDEPENDENCE, FAIRNESS, IMPARTIALITY, INTEGRITY, AND COMPETENCE.

CODE OF JUDICIAL CONDUCT AND RULES GOVERNING THE STANDARDS OF CONDUCT OF MAGISTERIAL DISTRICT JUDGES, **PREAMBLE [2] AND [3]**

OVERARCHING PRINCIPLES

RULE 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

A JUDGE SHALL ACT **AT ALL TIMES** IN A MANNER THAT PROMOTES PUBLIC CONFIDENCE IN THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

PUBLIC CONFIDENCE IN THE JUDICIARY IS ERODED BY IMPROPER CONDUCT AND CONDUCT THAT CREATES THE APPEARANCE OF IMPROPRIETY. **THIS PRINCIPLE APPLIES TO BOTH THE PROFESSIONAL AND PERSONAL CONDUCT OF A JUDGE.** A JUDGE SHOULD **EXPECT TO BE THE SUBJECT OF PUBLIC SCRUTINY** THAT MIGHT BE VIEWED AS BURDENSOME IF APPLIED TO OTHER CITIZENS, AND MUST ACCEPT THE RESTRICTIONS IMPOSED BY THE CODE. **CONDUCT THAT COMPROMISES OR APPEARS TO COMPROMISE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF A JUDGE UNDERMINES PUBLIC CONFIDENCE IN THE JUDICIARY.**

CANON 1, RULE 1.2, COMMENTS [1]. [2] AND [3].

Code of Judicial Conduct

(JULY 1, 2014 AND AFTER)

- **Canon 1:** A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- **Canon 2:** A judge shall perform the duties of judicial office impartially, competently, and diligently.
- **Canon 3:** A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- **Canon 4:** A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Rules Governing Standards of Conduct of Magisterial District Judges (December 1, 2014 and After)

- **Canon 1:** A magisterial district judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- **Canon 2:** A magisterial district judge shall perform the duties of judicial office impartially, competently, and diligently.
- **Canon 3:** A magisterial district judge shall conduct the magisterial district judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- **Canon 4:** A magisterial district judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Code of Judicial Conduct

CANONS SHORTHAND

CANON 1: JUDICIAL IMAGE – LAW ABIDING, TRUSTWORTHY, FAIR, UNBIASED, AND ABOVE USING MY POSITION FOR PERSONAL GAIN

CANON 2: JUDICIAL BEHAVIOR

CANON 3: OFF BENCH ACTIVITIES

CANON 4: POLITICAL ACTIVITY

Pennsylvania Judges Must:

- Administer justice **fairly, ethically, uniformly, promptly** and **efficiently** (Canon 1);
- Be **free from personal bias** (Rules 2.2, 2.3);
- Issue **prompt rulings** and make decisions that demonstrate competent legal analysis (Rules 2.1, 2.5, 2.7);
- Act with **dignity, courtesy** and **patience** (Rule 2.8);
- **Effectively manage** their courtrooms and the administrative responsibilities of their office staff (Rules 2.5, 2.8); and
- **Respect and comply with the law** (Rule 1.1).

Judicial Conduct Checklist

How does the judge's conduct appear to someone else?

■ Apply the **"HEADLINE TEST"** when deciding whether conduct is appropriate or inappropriate.

✓ Would the judge mind seeing a headline in tomorrow's newspaper reporting that the judge engaged in the reported conduct?

✓ Is the conduct undignified or does it otherwise reflect poorly on the judiciary?

✓ Does the conduct offend anyone or make the judge appear to be prejudiced or biased?

✓ Is the conduct lawful?

Judicial Conduct Board Authority

Pennsylvania Constitution
Article V, §§ 17, 18

Code of Judicial Conduct

Rules Governing Standards
of Conduct of Magisterial District Judges

Supreme Court Orders
Governing Judicial Conduct

Judicial Conduct Board and
Court of Judicial Discipline
Rules of Procedures

Decisions of the Pennsylvania Supreme Court, the Special Tribunal &
the Court of Judicial Discipline

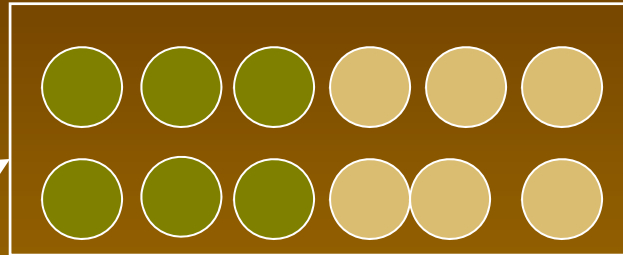
Judicial Conduct Board Authority

- **Judicial Misconduct**
- **Mental or Physical Disability (including substance abuse) - Diversion** Pennsylvania Constitution, Article V, Section 18(a)(9)

Judicial Conduct Board

Pennsylvania Constitution, Article V, Section 18(a)

Members – 12
6 Public Members
3 Attorneys
3 Judges



Appointments by
Governor
(6)
3 Public Members
2 Attorneys
1 Judge

Jurisdiction

Appellate Courts

Common Pleas
Phila. Municipal Court

Magisterial District Judges
Traffic Court Judges

Appointments by
Supreme Court
(6)
3 Public Members
1 Attorney
2 Judges

1200+
Judicial
Positions

Judicial Conduct Board

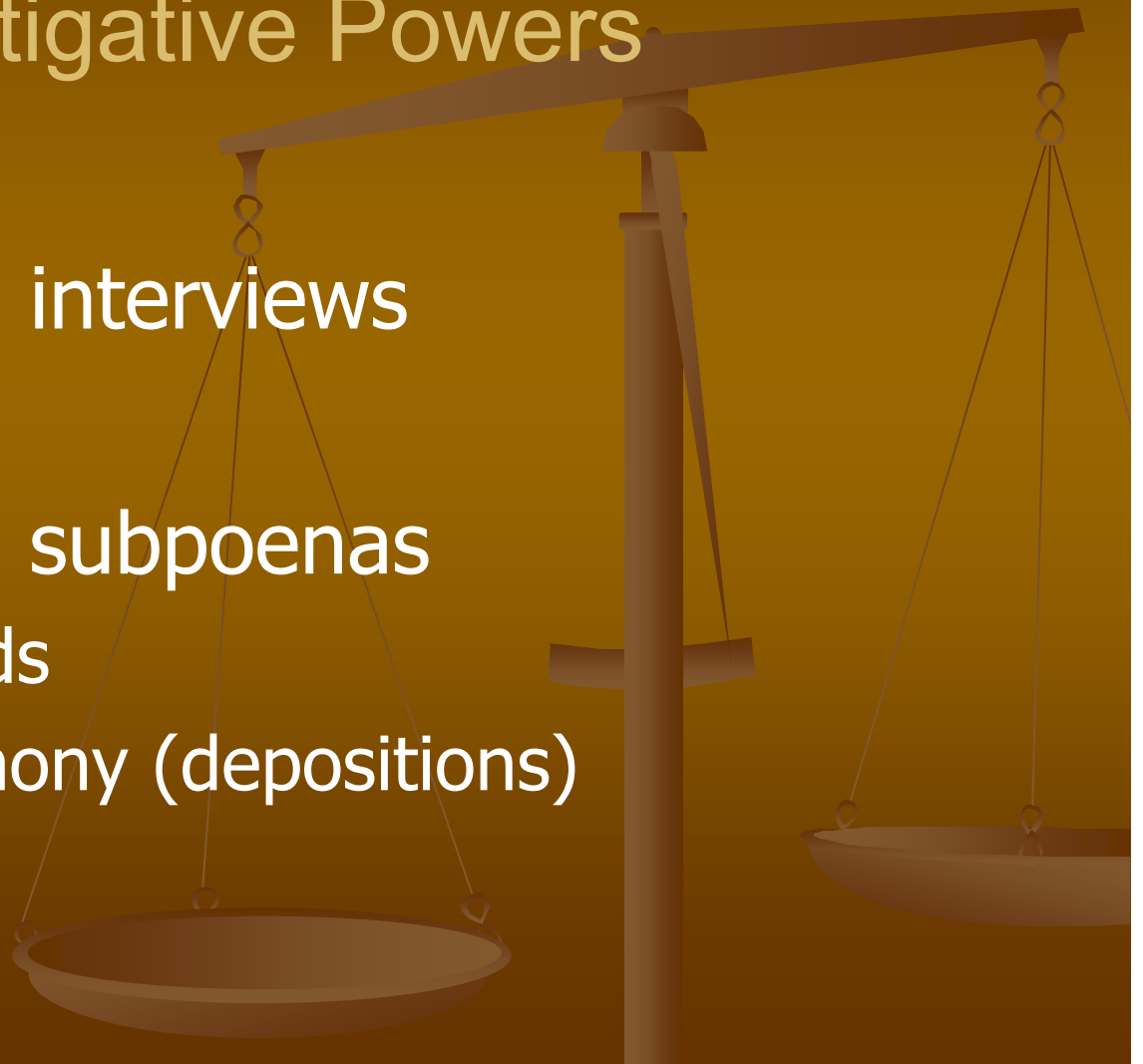
Mission Statement

**Preserving the honor, dignity,
independence, and integrity of
Pennsylvania's judiciary**

Judicial Conduct Board

Investigative Powers

- Investigative interviews
- Investigative subpoenas
 - For records
 - For testimony (depositions)



Judicial Conduct Board

Sources of Complaints

- Litigants
- Family Members
- Public
- Media
- Attorneys
- Judges
- Board/Chief Counsel
- Anonymous

COMPLAINT PROCESS

Complaint

Judicial Conduct Board

The Board investigates complaints of Judicial misconduct and, if warranted, Files formal charges with the Court Of Judicial Discipline

Court of Judicial Discipline

The Court hears formal charges brought Against a judge by the Board and decides Whether or not to impose discipline, And if so, what that discipline should be.

Pennsylvania Supreme Court

Appeals from Court of Judicial Discipline
Supervisory authority over UJS, Pa. Const. Art. V, § 10

Dismissal After Preliminary Investigation

Notice of Full Investigation

Letter of Caution

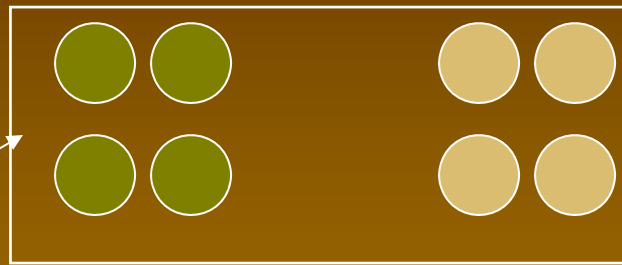
Letter of Counsel

■ = CONFIDENTIAL (PA Constitution Article 18(a)(8))

Court of Judicial Discipline

Pennsylvania Constitution, Article V, Section 18(b)(1)

Members – 8
2 Public Members
2 Lawyers
4 Judges



Appointments
by Governor
(4)
1 Judge
1 Public Member
2 Lawyers

Appointments
by Supreme Court
(4)
2 Judges
1 MDJ
1 Public Member

Court of Judicial Discipline

Pennsylvania Constitution, Article V, Section 18(b)(4) and (5)

- court of record
- authorized to adopt rules to govern the conduct of proceedings before the court
- charges filed with the court are public record
- hearings are public and conducted pursuant to court's rules (in accord with principles of due process and law of evidence)
- parties in court have right to discovery pursuant to court's rules, including right to subpoena witnesses and documents
- charged judge is presumed innocent in any proceeding before the court
- Board has burden of proving the charges by clear and convincing evidence
- decisions of the court must be in writing contain findings of fact and conclusions of law

Possible CJD Sanctions

Pennsylvania Constitution, Article V, Section 18(d)

- Censure
- Reprimand (“otherwise disciplined”)
 - Personal Appearance before CJD
- Probation (“otherwise disciplined”)
- Suspension
 - With Pay
 - Without Pay
- Removal

JUDICIAL CONDUCT BOARD

AREAS OF COMPLAINTS

- - Judges who make mistakes
- - Judges who do dumb things
- - Judges who do evil things

Nature of Complaints

- **Abuse of Power – Rule 1.3**
- **Administrative Failures, Treatment of Court Staff, Improper Delegation**
 - Delay – Rule 2.5(A)
 - Statement of Financial Interest – Rule 3.15
 - Abusing Court Employees – Rule 2.8(B)

Nature of Complaints

- **Demeanor, Impartiality, and Comments on the Bench**
 - Rude and Abusive Behavior –Rule 2.8(B)
 - Judicial Bias – Rule 2.3(A)
 - Sexual Harassment – Rule 2.3(B)
 - Impropriety and the Appearance of Impropriety – Rule 1.2
 - Improper Comments on Jury Verdicts – Rule 2.8(C)

Nature of Complaints

- **Disqualification/Recusal/Disclosure**
 - Economic Interest - Rule 2.11(A)(2)
 - Personal Bias or Prejudice - Rule 2.11(A)(1)
 - Large Campaign Contributions - Rule 2.11(A)(4)

Nature of Complaints

- **Ex Parte Communications - Rule 2.9**
 - Communicating With Only One of the Parties or Lawyers
 - Independent Investigation of Facts - Rule 2.9(C)

Nature of Complaints

■ Personal Misconduct

- Criminal Conduct - 1.1
- Gift/Loan From Litigant or Attorney – 3.13
- Misuse of the Office – 1.3 and 2.13
- Dealings With Lawyers or Other Persons Likely to Come Before the Court – 3.13

Nature of Complaints

Political Activities - Canon 4

- ✓ Judge or judicial candidate personally soliciting campaign funds -4.1(A)(4) and 4.1(A)(7)
- ✓ Judge or judicial candidate publicly endorsing political candidates – 4.1(A)(3)
- ✓ Judge using official equipment or staff for campaign purposes – 4.1(A)(8)
- ✓ Misrepresenting facts – 4.1(A)(9)

Nature of Complaints

- **Failure to Cooperate with Board;
Lying to Board; Asking Witness to
Lie; Retaliating Against Complainant
–2.16**

LAWYER'S ETHICAL OBLIGATION

“A LAWYER WHO KNOWS THAT A JUDGE HAS COMMITTEED A VIOLATION OF APPLICABLE RULES OF JUDICIAL CONDUCT THAT RAISES A SUBSTANTIAL QUESTION AS TO THE JUDGE'S FITNESS FOR OFFICE SHALL INFORM THE APPROPRIATE AUTHORITY.”

RULE OF PROFESSIONAL CONDUCT 8.3(B)

Contact Information

JUDICIAL CONDUCT BOARD
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17120-0901
(717)234-7911
www.jcbpa.org